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Commission on Crime Prevention and Criminal Justice
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Agenda item 5
Integration and coordination of efforts by the United Nations Office on Drugs and Crime and Member States in the field of crime prevention and criminal justice

Argentina, Australia, Italy, Mexico, Turkey and Uruguay: revised draft resolution

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the adoption of the following draft resolution:

Strengthening international cooperation in addressing the smuggling of migrants

The Economic and Social Council,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Expressing its deepest concern over the negative impact of the smuggling of migrants on society and the rule of law and over the fact that individual migrants have lost their lives in dangerous smuggling operations, and commending all those who have dedicated themselves to protecting and assisting smuggled migrants, whose lives or safety are endangered by reason of being the object of such conduct,

Expressing its deepest concern also about the increase in the activities of transnational and national organized criminal entities and others that profit from the smuggling of migrants, especially women and children, and related offences,

Recalling General Assembly resolutions 66/128 of 19 December 2011, entitled "Violence against women migrant workers", 66/172 of 19 December 2011, entitled "Protection of migrants", 67/185 of 20 December 2012, entitled "Promoting efforts to eliminate violence against migrants, migrant workers and their families", 67/219 of 21 December 2012, entitled "International migration and development", 68/4 of 3 October 2013, entitled "Declaration of the High-level Dialogue on International

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Migration and Development", and 68/193 of 18 December 2013, entitled "Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity",

Recognizing that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, and also recognizing that this cross-cutting phenomenon should be addressed in a coherent, comprehensive and balanced manner, while respecting human rights and integrating development aspects, with due regard for social, economic and environmental dimensions,

Underlining the challenges posed by the smuggling of migrants by land, sea and air, as illustrated by events at the global level,

Bearing in mind the obligations of States under applicable international law to exercise due diligence to prevent and combat the smuggling of migrants and to investigate and punish perpetrators, notwithstanding the obligation of States to protect the rights and respect the dignity of smuggled migrants under applicable international law,

Recognizing the sovereign right of States to enact and implement migration and border security measures, without prejudice to applicable international commitments in relation to the free movement of people,

Recognizing also the need for more effective international information-sharing, law enforcement cooperation and mutual legal assistance to prevent and combat the smuggling of migrants,

Recalling that migrants shall not be liable to criminal prosecution under the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime[1] for the fact of having been the object of conduct set out in article 6 of the Protocol, and that nothing in the Protocol prevents a State party from taking measures against a person whose conduct constitutes an offence under its domestic law,

Bearing in mind the need for a focused and consistent criminal justice approach to the smuggling of migrants and related offences,

Underlining that, although the crime of smuggling of migrants may share, in some cases, some common features with the crime of trafficking in persons, Member States need to recognize that they are distinct crimes requiring separate and complementary legal, operational and policy responses,

Welcoming the work and tools of the United Nations Office on Drugs and Crime in the framework of the global programme against the smuggling of migrants, including the *Model Law against the Smuggling of Migrants*, the *International Framework for Action to Implement the Smuggling of Migrants Protocol* and the *Assessment Guide to the Criminal Justice Response to the Smuggling of Migrants*,

Taking note of the launch by the United Nations Office on Drugs and Crime of the Voluntary Reporting System on Migrant Smuggling and Related Conduct as a secure solution for collecting, sharing and analysing information on the smuggling

[1] United Nations, *Treaty Series*, vol. 2241, No. 39574.

of migrants, in support of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime,

Recalling that the theme of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Doha from 12 to 19 April 2015, will be "Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation",

1. *Underlines* the need to address challenges related to the smuggling of migrants through a comprehensive and balanced approach, and through bilateral, regional and international cooperation and dialogue, as appropriate, between countries of origin, transit and destination;

2. *Stresses* the importance of enhancing preventive measures, combating criminal networks and improving border control management, without prejudice to applicable international commitments in relation to the free movement of people;

3. *Highlights* the need to promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socioeconomic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socioeconomic causes of the smuggling of migrants, especially those related to poverty;

4. *Underlines* that international cooperation to prevent and combat the smuggling of migrants implies a common and shared responsibility among Member States;

5. *Also underlines* the crucial role of the United Nations Convention against Transnational Organized Crime[2] and of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,[3] as the primary international legal instruments to combat the smuggling of migrants and related conduct;

6. *Takes note with appreciation* of the increasing level of adherence to the Smuggling of Migrants Protocol and, on the tenth anniversary of its entry into force, urges States parties to implement it fully, and encourages States that have not done so to consider ratifying or acceding to the Protocol;

7. *Urges* Member States, where appropriate, to adopt measures to increase public awareness of the fact that the smuggling of migrants is a criminal activity frequently perpetrated by organized criminal groups for profit, posing serious risks to the migrants concerned;

8. *Stresses* the need to develop national and, as appropriate, regional policies and strategies against the smuggling of migrants and to reinforce international cooperation for the prevention of the crime and for the prosecution of smugglers, in accordance with national laws and legislation;

9. *Encourages* Member States to adopt relevant measures, including, if necessary, reviewing relevant legislation, including criminal laws and legislation,

[2] Ibid., vol. 2225, No. 39574.
[3] Ibid., vol. 2241, No. 39574.

and to criminalize the acts covered by the Organized Crime Convention and the Smuggling of Migrants Protocol, including by introducing appropriate sanctions commensurate with the nature and gravity of the offence;

10. *Urges* Member States, as appropriate, to avail themselves of the international cooperation framework provided by the Organized Crime Convention, the Smuggling of Migrants Protocol and other applicable international legal instruments, in order to ensure that they have an adequate legal framework to allow for extradition, mutual legal assistance and other cooperation tools in relation to such crimes;

11. *Encourages* Member States to cooperate with each other and with relevant international organizations to the fullest extent possible, in accordance with articles 18 and 19 of the Smuggling of Migrants Protocol and applicable obligations under relevant international law;

12. *Also encourages* Member States to ensure that, in investigating and prosecuting the smuggling of migrants, the concurrent undertaking of financial investigations is considered, with a view to tracing, freezing and confiscating proceeds acquired through that crime, and to consider the smuggling of migrants to be a predicate offence of money-laundering;

13. *Further encourages* Member States to take measures to protect witnesses in cases of smuggling of migrants as called for in the Organized Crime Convention, to take appropriate measures to provide for the effective protection of witnesses who testify in criminal proceedings and, as appropriate, their relatives, including protection from potential retaliation, and to strengthen international cooperation in this area;

14. *Encourages* Member States to promote the reliable collection of data and research, at the national and, as appropriate, the regional and international levels, on the smuggling of migrants, including on smuggling networks and the involvement of organized crime in countries of origin, transit and destination, and on the possible links that may exist between smuggling of migrants and other criminal activities;

15. *Also encourages* Member States to consider strengthening multi-agency cooperation and coordination at the national, bilateral and, where appropriate, regional levels, and to consider, if necessary, the establishment of multi-agency centres for the purpose of data collection, strategic analysis and information-sharing in order to detect, prevent and combat the smuggling of migrants, in accordance with national legislation;

16. *Further encourages* Member States to exchange information, as appropriate, on best practices to promote cooperation to prevent and combat the smuggling of migrants and coordination to investigate and prosecute the smuggling of migrants, in accordance with applicable domestic and international law;

17. *Encourages* Member States to use existing channels for information exchange, such as those provided by the International Criminal Police Organization (INTERPOL), to exchange information, in a manner consistent with domestic law, including information on persons convicted or suspected of conducting or facilitating the smuggling of migrants;

18. *Notes* the roles and responsibilities of countries of origin, transit and destination in protecting the rights of smuggled migrants and the need to avoid approaches that might aggravate their vulnerability, and reaffirms the need to effectively protect the rights and respect the dignity of smuggled migrants and internationally recognized principles of non-discrimination and other applicable obligations under relevant international law, taking into account the special needs of women and children, especially unaccompanied children;

19. *Stresses* the primary role of the State in overcoming the challenges posed by the smuggling of migrants, and recognizes the important contribution of non-governmental organizations, other relevant organizations and other elements of civil society in protecting and assisting smuggled migrants;

20. *Invites* Member States to fully utilize all relevant tools developed by the United Nations Office on Drugs and Crime within the global programme against the smuggling of migrants and the relevant regional and national programmes, including the Sharing Electronic Resources and Laws against Organized Crime knowledge management portal, and also invites Member States to provide to the Secretariat legislation and case law related to the smuggling of migrants, for inclusion in that knowledge management portal;

21. *Also invites* Member States, though bilateral, regional and international cooperation, where appropriate, to collaborate to prevent and combat the smuggling of migrants through the provision of assistance, including technical assistance, upon request, with a view to building capacities and enhancing abilities to prevent and combat the smuggling of migrants;

22. *Encourages* Member States to provide specialized training for law enforcement, immigration and border control officials and coastguard personnel, as well as forensic experts, prosecutors and judges, so that they are better able to recognize and deal with issues related to the smuggling of migrants;

23. *Encourages* the United Nations Office on Drugs and Crime to continue providing, upon request, technical assistance aimed at strengthening the capacity of Member States to criminalize, investigate and prosecute the smuggling of migrants, and invites Member States to consider and to draw upon the *International Framework for Action to Implement the Smuggling of Migrants Protocol* and the *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*[4] and the *In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants*;

24. *Requests* the United Nations Office on Drugs and Crime to strengthen collaboration and cooperation with all relevant bodies, agencies, funds and programmes of the United Nations system, other relevant intergovernmental, regional and subregional organizations, including Global Migration Group members, within their respective mandates, in order to adopt a coherent, comprehensive and coordinated approach and thus to fully address the challenges posed by the smuggling of migrants;

25. *Encourages* Member States to make the best use of the relevant work and initiatives of the institutes of the United Nations crime prevention and criminal

[4] United Nations publication, Sales No. E.10.IV.7.

justice programme network in order to promote regional and international cooperation against the smuggling of migrants;

26. *Encourages* Member States and the United Nations Office on Drugs and Crime to promote cooperation on the most effective ways to prevent and combat the smuggling of migrants, in view of, among other things, the workshop on the topic "Trafficking in persons and smuggling of migrants: successes and challenges in criminalization, in mutual legal assistance and in effective protection of witnesses and trafficking victims", to be held within the framework of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice;

27. *Invites* Member States and other donors to provide extrabudgetary resources for these purposes, in accordance with the rules and procedures of the United Nations;

28. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-fifth session on the implementation of the present resolution.